

DRAFT – January 2001: Water Rights Administration proposed rule, Chapter 173-151 WAC

This is a list of proposed sections for Chapter 173-151 WAC and each of the concepts or issues within that section.

WAC 173-151-330. What is a permit development schedule?

- (1) The permit development schedule is to ensure that the permit holder shows due diligence and reasonable progress in perfecting (putting water to use) a water right permit as required by law. The development schedule may include, as appropriate, three different time periods: a) beginning of construction, b) completion of construction, and c) proof of appropriation (perfection of water use).
- (2) The Department, at its discretion, may send a reminder letter to a permit holder about the permit development schedule.

WAC 173-151-340. Can a development schedule be extended for good cause?

Yes, if good cause is shown by the permit holder.

WAC 173-151-345. What is required to request an extension of the permit schedule?

- (1) To request an extension the following information is needed: a) Information about the project status and development to date; b) the reasons for delay in development of the project; c) the steps that have been taken to overcome delays; d) a new development schedule that the permit holder believes can be met; and e) payment of the extension fee as required by law.
- (2) Additional information is needed if it is a Family Farm Development Permit

WAC 173-151-350. How does the Department evaluate the extension request?

- (1) Evaluation of the request is a three-prong test. a) Good cause must be shown. b) The good faith of the permit holder is assessed. c) Due regard is given to public interests that may be affected.
- (2) If the Department determines it will grant an extension of the development schedule, a new development schedule and the conditions under which the extension is granted are sent to the permit holder. If a beginning of construction or completion of construction phase of a permit is extended, the extension may extend the time allowed for subsequent stages of development.
- (3) If the Department determines no further extension is to be granted, the Department will initiate cancellation of the permit upon expiration of the development schedule.

WAC 173-151-360. How is a water right permit cancelled?

- (1) The Department will send the permit holder an order if a permit is to be cancelled. The order will state the reasons why the permit is being canceled.
- (2) The permit holder has up to sixty (60) days to answer and show cause why the permit should not be canceled. For good cause, the permit will be extended. If good cause is not shown, the permit would be canceled by *Order of Permit Cancellation*.

WAC 173-151-380. What is proof of appropriation?

- (1) Proof of appropriation is to confirm completion of project development, compliance with permit provisions, and verification of the extent of beneficial water use by the permit holder.
- (2) The Department, at its discretion, may conduct an inspection of the permitted water use for the purpose of verifying the proof of appropriation and the extent of beneficial water use.

WAC 173-151-390. How does the Department determine if the water right has been perfected?

The Department will evaluate the information filed on the proof form, as well as any field information collected, and confirm that water was developed as authorized by the permit. If the water was applied to beneficial use, the water right certificate attributes (quantity of water, point of diversion/withdrawal, place of use, purpose of use), are defined, especially if less than the permitted use.

WAC 173-151-395. When is a certificate of water right issued?

- (1) A certificate is issued after receipt of the state certificate recording fee (see RCW 90.03.470) and county recording fee (see Chapter 36.18 RCW).
- (2) The certificate is subject to all relevant previously imposed conditions and provisos contained on the permit and any extension, any court orders, the report of examination, and the intent of the applicant expressed in the application.
- (3) The law makes no provision for the Department to change names on certificates.

WAC 173-151-400. Can the Department correct ministerial errors on certificates?

- (1) It must be clear from the record that the certificate contains ministerial errors. Then, yes. Either the holder of the certificate or the department may initiate correction of ministerial errors.

- (2) A superseding certificate is recorded in the same way as a new certificate.
- (3) Recording fees are the responsibility of the water right holder, unless the Department committed the ministerial error.

WAC 173-151-410. Can the Department correct substantive errors on certificates

- (1) Yes, the Department may repeal a certificate if it determines that the certificate was issued where a water right, in whole or in part, was never actually perfected, or some other substantive error exists. The owner of the property described as the place of water use within the certificate is given up to sixty (60) days to provide evidence that the certificate was properly issued, or that a water right for an amount of water smaller than that described within the flawed certificate was perfected.
- (2) A certificate is repealed through an administrative order issued by the Department. The order by itself does not alter the recipient's right to use water if any water right exists, and the effect of this order is on hold during the time of an appeal to the Pollution Control Hearings Board. The order becomes effective if the recipient fails to file a timely appeal, or upon resolution of an appeal that upholds the order.
- (3) The Department, after making a determination that sufficient evidence has been provided to conclude a portion of the right has been perfected, may issue a certificate that accurately describes the perfected water right.

WAC 173-151-420. What is the effect of the order correcting documents?

- (1) The underlying permit authorizes water use. The order will reiterate and re-document the original attributes of the water right permit or previous authorization, including the place of use, point of withdrawal or diversion, purpose of use, instantaneous and annual volume of water authorized, construction schedule, and priority date.
- (2) Any water right permit not in good standing will be canceled pursuant to RCW 90.03.320.
- (3) A superseding permit may be issued to document the inchoate (undeveloped) water right.